

original

MICHAEL K. JEANES, CLERK
BY *L. Anderson*
DEP
FILED

13 NOV 22 PM 3:58

1 Name Robledo, Paul, A - #250767
2 Address ASPC - Lewis - Bachman Unit
~~██████████~~ P.O. Box 3500
Buckeye, AZ 85326

3 SUPERIOR COURT MARICOPA County, Arizona

STATE OF ARIZONA, plaintiff -vs- <u>Paul</u> <u>Paul Anthony Robledo</u> Defendant (FIRST, MI, LAST)	[CASE/COMPLAINT NO.] <u>CR2009-110121-0015E</u>	PETITION FOR POST-CONVICTION RELIEF
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PETITION FOR POST-CONVICTION RELIEF

Instructions: In order for this petition to receive consideration by the court, you should file Form 24(b).

Each applicable question in Form 25 must be answered fully but concisely in legible handwriting or by typing. When necessary, an answer to a particular question may be completed on the reverse side of the page or on an additional blank page, making clear to which question such continued answer refers.

Any false statement of fact made and sworn to under oath in this petition could serve as the basis for prosecution and conviction for perjury. Therefore, exercise care to assure that all answers are true and correct.

NO ISSUE WHICH HAS ALREADY BEEN RAISED AND DECIDED ON APPEAL OR IN A PREVIOUS PETITION MAY BE USED AS A BASIS FOR THIS PETITION.

TAKE CARE TO INCLUDE EVERY GROUND FOR RELIEF WHICH IS KNOWN AND WHICH HAS NOT BEEN RAISED AND DECIDED PREVIOUSLY, SINCE FAILURE TO RAISE ANY SUCH GROUND IN THIS PETITION WILL BAR ITS BEING RAISED LATER.

When the petition is complete, mail it to the clerk of the court in which conviction occurred.

1. Petitioner's Name: Paul Anthony Robledo
Petitioner's prison number (if any): 250767

2. Petitioner is now: ☐ On Parole
☐ On Probation
☒ Confined in ASPC-Lewis-Bachman Unit

3. Petitioner is eligible for relief because of:

- ☐ The introduction at trial of evidence obtained pursuant to an unlawful arrest.
- ☐ The introduction at trial of evidence obtained by an unconstitutional search and seizure.
- ☐ The introduction at trial of an identification obtained in violation of constitutional rights.

- 1 ☐ The introduction at trial of a coerced confession.
- 2 ☐ The introduction at trial of a statement obtained in the absence of a lawyer at a
3 time when representation is constitutionally required.
- 4 ☐ Any other infringement of the right against self-incrimination.
- 5 ☒ The denial of the constitutional right to representation by a competent lawyer at
6 every critical stage of the proceeding.
- 7 ☐ The unconstitutional suppression of evidence by the state.
- 8 ☐ The unconstitutional use by the state of perjured testimony.
- 9 ☒ An unlawfully induced plea of guilty or no contest.
- 10 ☐ Violation of the right not to be placed twice in jeopardy for the same offense.
- 11 ☒ The abridgement of any other right guaranteed by the constitution or the laws of
12 this state, or the constitution of the United States, including a right that was not
13 recognized as existing at the time of the trial if retrospective application of that
14 right is required.
- 15 ☒ The existence of newly-discovered material which require the court to vacate the
16 conviction or sentence.
17 [Specify when petitioner learned of these facts for the first time, and show how
18 they would have affected the trial.]
19 I just learned of these issues that should
20 change my conviction and/or sentence.
- 21 ☐ The lack of jurisdiction of the court which entered the conviction or sentence.
- 22 ☐ The use by the state in determining sentence of a prior conviction obtained in
23 violation of the United States or Arizona constitutions.
- 24 ☒ Sentence imposed other than in accordance with the sentencing procedures
25 established by rule and statute.
- 26 ☐ Being held beyond the term of sentence or after parole or probation has been
27 unlawfully revoked.
- 28 ☐ The failure of the judge at sentencing to advise petitioner of his right to appeal
and the procedures for doing so.
- ☐ The failure of petitioner's attorney to file a timely notice of appeal after being
instructed to do so.
- ☐ The obstruction by state officials of the right to appeal.
- ☐ Any other ground within the scope of Rule 32 of the Arizona Rules of Criminal
Procedure (please specify).

1 4. The facts in support of the alleged error(s) upon which this petition is based are contained in
2 Attachment A. [State facts clearly and fully; citations or discussions of authorities need not be
3 included].

Attached - Pages 3A to 3K plus exhibit

4
5 5. Supporting exhibits:

6 A. The following exhibits are attached in support of the petition:

7 Affidavits [Exhibit(s) # _____]

8 Records [Exhibit(s) # _____]

9 Other supporting evidence [Exhibit(s) # A _____]

10 B. No affidavits, records or other supporting evidence are attached because
11 _____

12 6. Petitioner has taken the following actions to secure relief from his convictions or sentences:

13 A. Direct Appeal: [] Yes ☒ No (If yes, name the courts to which appeals were
14 taken, date, number, and result.) _____

15 B. Previous Rule 32 Proceedings: ☒ Yes [] No (If yes, name the court in which
16 such petitions were filed, dates, numbers, and results, including all appeals from
17 decisions on such petitions.) Superior Court of AZ August 2010
was dismissed and a Petition for Review dismissed in January 2011. Same
Court July 2013 was dismissed and a Petition for Review is pending.

18 C. Previous Habeas Corpus or Special Action Proceedings in the Courts of Arizona:
19 [] Yes ☒ No (If yes, name the courts in which such petitions were filed, dates,
20 numbers, and results, including all appeals from decisions on such petitions.)
21 _____

22 D. Habeas Corpus or Other Petitions in Federal Courts: ☒ Yes [] No (If yes,
23 name the districts in which petitions were filed, dates, court numbers-civil action
24 or miscellaneous, and results, including all appeals from decisions on such
25 petitions.) United States District Court for the District of AZ
Filed in 2012 and dismissed 2013, case #CV12-1281-PHX-JAT-(MEA)

26 7. The issues which are raised in this petition have not been finally decided nor raised
27 before because: (State facts.)

I just found these material facts. The material facts are
newly discovered that should change my sentence and/or
conviction.

ATTACHMENT 'A'

(4) Even though the instructions for completing this section state that citations or discussions of authorities need NOT be included, Rule 32.5 states they are required. Therefore, the Petitioner HAS included them in this Petition.

ISSUE #1 - INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL:

1) Trial counsel gave erroneous advice to the Petitioner in association with whether to accept a guilty plea with the Court. "Trial counsel induced Defendant's guilty plea based on erroneous advice, renders the guilty plea itself involuntary and unintelligently entered and constitutes ineffective assistance." U.S. v. Rumery, 698 F.2d 764 (5th Cir. 1983), "Trial counsel's promise that Defendant would receive a specific sentence which was used to induce guilty plea, constitutes ineffective assistance and requires an evidentiary hearing to resolve the claim," U.S. v. Espinoza, 866 F.2d 1067 (9th Cir. 1988).

2) As a result, Petitioner received an illegal sentence which was harsher than what was told to him by his attorney - a clear violation of the Strickland v.

1 Washington, 466 U.S. 668 (1984) 2-prong test - "This
2 Court set a 2-prong test for ineffectiveness - (1)
3 Representation fell below the normal professional
4 standards; and (2) the deficient performance
5 prejudiced the Defendant."

6 In the Petitioner's case, an illegal sentence is
7 the prejudice.
8

9 3) There was NO diminished capacity issues or
10 defenses used at sentencing by defense counsel. Also,
11 NO argument as to the Judge handing down a
12 sentence OVER the presumptive WITHOUT the aid
13 of a jury.
14

15 ISSUE #2 - ILLEGAL SENTENCE:

16

17 1) The Petitioner was given the maximum sentence by
18 the Judge; NOT a jury, and any aggravating factors
19 were NOT proven beyond a reasonable doubt. This
20 is a clear VIOLATION of two (2) U.S. Supreme
21 Court rulings on this subject.
22

23 2) After 2000 and 2004, "A jury MUST decide
24 aggravating factors and those MUST be proven beyond
25 a reasonable doubt." Apprendi v. New Jersey, 120
26 S. Ct. 2348 (2000) and Blakely v. Washington, 124 S.Ct.

2531 (2004).

The ONLY exception is priors and the Petitioner had NONE.

3) The above rulings have been upheld in Arizona. "Following Apprendi, sentence enhancement by a judge is illegal." State v. Beasley, 205 Ariz. 334, 70 P. 3d 463 (App. 2003). "Under Arizona's non-capital sentencing statutes, maximum punishment authorized by jury verdict alone, without finding of any additional facts is the presumptive term (A.R.S. 13-701)." State v. Johnson, 210 Ariz. 438, 111 P. 3d 1038 (App. Div. 2 - 2005).

4) A.R.S. 13-702.01 was in the indictment. That Statute was ruled unconstitutional. "A.R.S. 13-702 and 702.01 are unconstitutional on their face." State v. Brown, 209 Ariz. 200 (2004). The reason for this ruling is that it states that a Court (Judge) determines aggravating factors, NOT a jury.

5) "The right of trial by jury extends through sentencing." State v. Martinez, 210 Ariz. 578, 580, 115 P. 3d 618, 620 (2005).

6) The Apprendi and Blakely rulings are "Law of the

Land" and ALL states MUST Follow them. "sentencing a Defendant outside of constitutional limits creates an illegal sentence, which can constitute fundamental error." State v. Resendis - Felix, 209 Ariz. 292, 100 P.3d 457 (App. Div. 2 - 2004).

However, Petitioner's sentencing Court chose to ignore these case rulings and sentence him to a maximum sentence WITHOUT a jury.

7) Furthermore, the allegation of dangerous had to be brought PRIOR to any plea of trial. At sentencing, the prosecutor inserted it at that time. This was done at the "Change of Plea Hearing" on January 4, 2010. "Defendant was entitled to have conviction for misconduct involving weapons remanded for resentencing, based on State's failure to allege, and jury's failure to find, statute requirement for dangerousness, despite sentencing Court's apparent intent to impose maximum allowable sentence, where applicable statute requires findings of at least two statutory aggravating factors prior to imposition of maximum allowable sentence." State v. Purcell, 18 P.3d 113 (App. Div. 1 - 2001).

8) ALL the above cases prove Re Petitioner's

1 sentence is illegal.

2
3 **ISSUE #3 - NEWLY DISCOVERED MATERIAL FACT:**

4 1) The newly discovered material fact is that I have
5 Dissociative Identity Disorder. There are four(4)
6 alternate personalities who take control of my mind
7 and/or body, either partially or completely, at times
8 The Phoenix took complete control of my mind and
9 my body on February 7, 2009 and tried to kill my
10 wife, Erika G. Ullonueva, and me. Aeneas has
11 partial control of my mind and body and has not
12 allowed me to speak since December 12, 2012. Aeneas
13 is the personality who made me aware of this
14 material fact in January 2012.

15
16 2) This newly discovered material fact satisfies the five
17 (5) requirements set forth by: State v. Jeffers, 135 Ariz.
18 404, 661 P.2d 1105 (1983) and State v. Urry, 104 Ariz.
19 244, 450 P.2d 1018 (1969) in the following ways: (A-E)

20
21 A) This material fact was truly discovered after the
22 Petitioner/Defendant pled guilty and was sentenced.
23 In January 2012, Aeneas came forward and explained
24 to me the existence of my alternate personalities, their
25 names, their roles, and some of their involvement in my
26 life like the Phoenix committing the crime for which

1 the Petitioner is serving time.

2
3 B) The record of the Petitioner's pre-trial proceedings
4 contains facts from which the Court can infer that
5 he used due diligence in the discovery of all
6 possible mental health illnesses and disorders like
7 Judge Phemonia L. Miller stating on page 3 of the
8 "Sentence of Imprisonment" document stating that
9 the Petitioner/Defendant received a mental health
10 diagnosis by Dr. Toma. Due diligence by the
11 Petitioner could not discover this evidence because
12 his alternate personalities were not known as
13 personalities; only one had a name and was known
14 as a "voice".

15
16 C) This newly discovered material fact is not merely
17 cumulative or impeaching.

18 The Petitioner has had Dissociative Identity Disorder
19 his entire life, but it was unknown to him until
20 January 2012 and confirmed by his mental health
21 records in the possession of the Arizona Department
22 of Corrections in June 2013 and October 2013.

23 This material fact is not merely impeaching because
24 there were no witnesses or experts who testified.

25
26 D) This newly discovered material fact is indeed

1 material to the issue of the Petitioner's state of mind.
2 The Phoenix had complete control of the Petitioner's
3 mind and body on February 7, 2009, therefore he
4 did not possess "the ability to attain culpable
5 state of mind which defines crime." U.S. v
6 Gonyea, 140 F.3d 649 (6th Cir. 1998). The Petitioner
7 did not meet the requirements necessary to prove
8 culpable mental state to establish criminal
9 responsibility or criminal liability as set forth in
10 A.R.S. 13-302, 13-201, and 13-202. Even though
11 the Defendant/Petitioner was found competent to
12 stand trial, the standard is higher when he
13 decided to plead guilty. "The test for competency
14 to waive constitutional rights and plead guilty,
15 must be greater than the test for competency
16 to stand trial." State v. Bishop, 162 Ariz. 103, 781
17 P.2d 581 (1989). A proper test would prove he may
18 plead Guilty except Insane under A.R.S. 13-502(A)
19 and be sentenced under A.R.S. 13-502(D)

20
21 E) This newly discovered material fact would change
22 the Petitioner's plea to Guilty Except Insane under
23 A.R.S. 13-502(A) and his sentence under A.R.S.
24 13-502(D). Therefore, the Petitioner "is entitled to
25 hearing on a colorable claim - one that, 'if
26 defendant's allegations are true, might have
27
28

1 changed the outcome." State v. Walton, 164 Ariz. 323,
2 328, 793 P.2d 80,85 (1990) (citing State v. Schrock,
3 149 Ariz. 433, 441, 719 P.2d 1049,1057 (1986))." from
4 State of Arizona v. Victor Donald,
5

6 3) This newly discovered material fact, i.e. - that
7 the Petitioner suffers from Dissociative Identity
8 Disorder, is supported by his mental health
9 records in the possession of the Arizona
10 Department of Corrections.
11

12 Issue #4 - Post-CONVICTION RELIEF:

13

14 1) "An objection to an illegal sentence cannot be
15 waived." State v. Givens, 206 Ariz. 186, 76 P.3d
16 457 (App. 2003). Petitioner's counsel was lax during
17 sentencing. An effective counsel would have
18 objected to the sentence imposed that was
19 aggravated beyond the presumptive without a
20 jury.
21

22 2) Technically, Petitioner's case may be considered
23 final, but he may still file this petition based
24 on the issues presented herein, especially Issue
25 #3 - Newly Discovered Material Fact.
26
27
28

3) There are additional case rulings which allow this Petition to be filed. "Court must adjudicate even successive claims when required to do so by ends of justice," Schlup v. Delo, 513 U.S. 298 (1995). "There is no time limit to file a collateral attack if based on ineffective assistance of counsel claim." Massaro v. U.S., 123 S.Ct. 1690 (2003).

4) Since the Petitioner has presented colorable claims, he IS entitled to an evidentiary hearing which is the ruling in Townsend v. Sain, 372 U.S. 293 (1963) and The State of Arizona v. Victor Donald.

CONCLUSION

Due to defense counsel's laxity, Petitioner pled to illegal terms; was NOT mentally capable to plead; and he received an illegal sentence. "An illegal sentence constitutes fundamental error, that will be reversed on appeal despite a lack of objection in the trial." State v. Canon, 199 Ariz. 227, 230 P.10 16 P.3d 788, 791 (App. 2000). "Petitioner would have received less harsh sentence, absent counsel's unprofessional errors or omissions." Nicholas v.

1 U.S., 75 F.3d 1137.

2 Furthermore, defense counsel NEVER presented
3 "Diminished Capacity" as a defense which is
4 NOT an excuse, but is directly concerned
5 with whether or not "the defendant possessed
6 the ability to attain culpable state of mind
7 which defines crime." U.S. v. Gonyea, 140 F.3d,
8 649 (6th Cir. 1998).

9 A.R.S. 13-201 and 13-202 cover culpable mental
10 state requirements. Petitioner does NOT meet
11 the requirements necessary to prove culpable
12 mental state to establish criminal responsibility.
13 He also does NOT meet the criminal liability
14 standard stated in A.R.S. 13-302.

15 Even if a defendant is found competent to
16 stand trial, the standard is higher if he decides
17 to plead guilty. "The test for competency to waive
18 constitutional rights and plead guilty, must be
19 greater than the test for competency to stand
20 trial." State v. Bishop, 162 Ariz. 103, 781 P.2d 581
21 (1989).

22 Petitioner was tested ONLY for trial purposes, NOT
23 for pleading guilty. A proper test would prove he was
24 and is NOT competent to plead guilty. However, he
25 may plead guilty except insane under A.R.S.
26 13-502(A) and be sentenced under A.R.S. 13-502(O).

27

28

1 Therefore, Petitioner requires an evidentiary
2 hearing and a separate mental health evalua-
3 tion for a plea under A.R.S. 13-502(A).
4 (However, A.R.S. 13-502(c) is unconstitutional as
5 it is the same as a statute in Oklahoma which
6 was ruled as unconstitutional. "Oklahoma statute
7 which provided accused was presumed to be
8 competent to stand trial unless he proved
9 incompetent by clear and convincing evidence
10 held to violate his right to due process
11 under the Fourteenth Amendment," Cooper v.
12 Oklahoma, 116 S.Ct. 11996)).

13 To prove the Judge determined the factors
14 for imposition of a maximum sentence;
15 EXHIBIT 'A' is a partial transcript of the
16 change of plea hearing page 11, lines 6-11;
17 page 12, lines 13-19; and page 18, lines 13-19.

18 For the foregoing issues and reasons herein,
19 an Evidentiary Hearing must be held and
20 the requested relief be granted.
21
22
23
24
25
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27
28

8. Because of the foregoing reasons, the relief which the petitioner desires is:

A. ☐ Release from custody and discharge.

B. ☒ A new trial. *or plea.*

C. ☒ Correction of sentence.

D. ☐ The right to file a delayed appeal.

E. ☐ Other relief (specify):

I swear or affirm that this petition includes all the claims and grounds for post-conviction relief that are known to me, that I understand that no further petitions concerning this conviction may be filed on any ground of which I am aware but do not raise at this time, and that the information contained in this form and in any attachments is true to the best of my knowledge or belief.

11-19-2013

Date

R. Robledo

Defendant

State of Arizona

County of *Maricopa*

) ss.

Subscribed and sworn to or affirmed before me on:

November 19, 2014

Date

June 16, 2014

My Commission Expires

R. Padilla

Notary Public

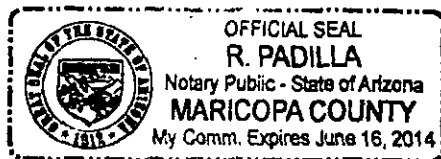


EXHIBIT 'A'

Exhibit 'A' Start Page

1 THE COURT: So Mr. Robledo, the State doesn't have
2 to make you a plea offer in this case and they've chosen not
3 to make you a plea offer -- well not one that will cap it at
4 ten and a half years anyway. So they don't have to make you
5 a plea offer. *Not true. I had other options.*
↓

6 Your only option is to plead to the Court. That
7 means you would plead guilty, you would admit that you
8 committed the offense to the Court and then you will leave
9 the sentencing up to the judge, so the sentencing judge, to
10 determine whether you get seven years or anywhere from seven
11 to 21 years.

12 Do you understand that?

13 THE DEFENDANT: Yeah.

14 THE COURT: All right. Do you have an idea of what
15 you want to do today?

16 THE DEFENDANT: No.

17 THE COURT: His other option is to -- you can have a
18 trial --

19 THE DEFENDANT: No, that's --

20 THE COURT: -- on this charge and let the jury
21 decide whether to find you guilty or not guilty.

22 THE DEFENDANT: No. I'd be willing to just plead
23 directly to the Court.

24 THE COURT: Okay. All right. Let's see if anybody
25 else has read --

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1 Do you want to go forward with it now, Ms. Houck, or
2 do you want to --

3 MS. HOUCK: That's fine.

4 THE COURT: -- set it off?

5 MS. HOUCK: No, we could do it now.

6 THE COURT: All right. Why don't you approach the
7 podium. Is there --

8 Ms. Willison, is there anything else you'd like to
9 add?

10 MS. WILLISON: No, Your Honor. Just that his plea
11 to the Court should include the domestic violence --

12 THE COURT: Okay.

13 MS. WILLISON: -- allegation and the dangerous
14 allegation.

15 THE COURT: All right. Mr. Robledo, you have
16 indicated that you want to plead guilty to Count I, attempted
17 first degree murder, which is a Class 3 dangerous felony and
18 a domestic violence offense, committed on or about February
19 7th of 2009. Is this what you want to do today, sir?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you had any medication, alcohol or
22 any other drugs within the last 24 hours that would affect
23 your ability to make a decision here today?

24 THE DEFENDANT: No. Just what I've been prescribed
25 by the psychologists.

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1 saying.

2 THE COURT: -- Mr. Robledo, okay?

3 UNIDENTIFIED SPEAKER: Because she's -- so her
4 immigration status has nothing to do it, okay.

5 THE COURT: Not as far as this Court is concerned
6 for today's purposes anyway.

7 All right. So do you understand the immigration
8 advisement?

9 THE DEFENDANT: Yes.

10 THE COURT: You have any questions about the
11 immigration advisement?

12 THE DEFENDANT: No.

13 THE COURT: All right. Then as to Count I,
14 attempted first degree murder, a Class 2 dangerous felony and
15 a domestic violence offense, committed on or about February
16 7th of 2009, and this is a dangerous, non-repetitive offense
17 under the criminal code; how do you plead in this case, sir,
18 guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: Counsel, a factual basis?

21 MS. HOUCK: On February 7, 2009 in Tempe, which is
22 in Maricopa County in the jurisdiction of this Court, Mr.
23 Robledo attempted to kill his wife, which makes it a domestic
24 violence offense. And he used a knife and a box cutter,
25 which makes it a dangerous offense.

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Certificate of Service

I, Paul Anthony Robledo, hereby certify that a copy of the foregoing document was placed in the inmate mailing system on November 20, 2013 to be mailed to:

The Maricopa County Attorney
301 W. Jefferson
Phoenix, AZ 85003

And the original plus two (2) copies to:

The Clerk of the Superior Court of Arizona
In and For Maricopa County
201 W. Jefferson
Phoenix, AZ 85003

Signed: P. A. Robledo